IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.33142 OF 2004

M/s.Sri Vittal Combines,
a registered partnership firm,
rep. by its partner,
Mr.Khalid A.K.Buhari,
having their Office at
M.K.M. Chambers, third floor,
No.42, Kodambakkam High Road,
Nungambakkam, Chennai - 600 034 .. Petitioner

vs.

1. The Commissioner and Secretary (Revenue),
   Government of Tamil Nadu,
   Fort St. George, Chennai - 600 009.

2. The Special Commissioner and
   Commissioner of Land Reforms
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner,
   Urban Land Tax and Ceiling,
   (T.Nagar), 345, Arcot Road,
   Kodambakkam, Chennai - 600 024. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.S.A.Rajan
For respondents : Mr.C.Thirumaran
Government Advocate

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O R D E R

The writ petition has been filed for the issuance of a Writ of Certiorari to call for the records of the first respondent relating to the property owned by the petitioner firm M/s.Vittal Combines, in

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S.Nos.116/1, 2A and 2B, measuring approximately 3450 sq. mtrs., in the proceedings G.O.Ms.No.344, Revenue (ULC 2-2) Department, dated 26.7.2004 and quash the same.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner is a registered partnership firm. The property comprised in S.No.116/1, 116/2A (part) and 2B, bearing Municipal Door No.55/2, Arcot Road, Chennai, measuring about one acre, belongs to the petitioner firm, having been purchased by a registered sale deed, dated 13.8.1969, in document No.2409 of 1969. As motion picture producers, the petitioner firm has been putting the property to use for their business activities.

3. Based on the Urban Land (Ceiling and Regulation) Act, 1976, which is a Central Act, introduced by the Central Government, the Government of Tamil Nadu enacted the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, with effect from 17.5.1978 (hereinafter referred to as the Act). The Act was introduced to impose a ceiling on the vacant lands in Urban agglomerations and for acquisition of such land in excess of the ceiling limits, in order to regulate the construction of the buildings with a view to prevent concentration of urban land in the hands of a few persons.

4. Since the property owned by the petitioner firm is within the Madras City agglomeration and the ceiling limit for a firm as specified in the enactment was 500 sq.mtrs, the petitioner firm had filed a statement declaring the excess land as required under Section 7 of the Act. After the preparation of a draft statement, a final statement was issued by the authority concerned, namely, the third respondent herein, who had declared the excess vacant land, under Section 11(3) of the Act, by publishing the necessary notification. Under Section 11(3) of the Act, on such publication of the fact of excess vacant land and from the date of such publication, it is deemed to have been acquired by the State Government and such land was deemed to have been vested absolutely in the State Government, free of all encumbrances, with effect from the date so specified in the notification. The extent of land thus vested with the Government was 3450 sq.mtrs. After the declaration under Section 11(3), by a letter (MS) 1314, dated 18.11.1992, the petitioner filed a writ petition in W.P.No.220 of 1993 to call for the records relating to the said letter, dated 18.11.1992 and to quash the Government Order, whereby, the land was deemed to have been acquired. It was further prayed that the Government be directed to provide exemption, as required under Section 21(1)(a) of Act. Since the said writ petition was dismissed by this Court, a Writ Appeal in W.A.No.50 of 1993 was preferred. By an order passed in the Writ Appeal, a Division Bench of this Court had directed the Government to consider the exemption application of the petitioner firm, dated 21.2.1991, within six weeks

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from the date of such order. The Special Leave Petition filed by the first respondent before the Supreme Court had been dismissed, confirming the order of the Division Bench.

5. Pursuant to the order passed by the Supreme Court, the first respondent, by his order, dated 1.2.1996, had exempted the land under Section 21(1)(a) of the Act with the condition that the firm should get an approved plan from the Chennai Metropolitan Development Authority and had also imposed certain other conditions. However, the possession of the land continued to be with the petitioner firm, as the State Government had not taken possession of the same. Due to the reason that there was a slump in the business activities of the petitioner firm, the conditions imposed on the petitioner firm could not be fulfilled. Therefore, a representation was submitted by the petitioner firm to the third respondent, who by his letter, dated 30.7.2003, had directed the petitioner firm to make personal representation before him. While so, the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, came to be repealed and therefore, the respondents had not taken the possession of the property. Thereafter, it was clear that the respondents could not impose any condition on the petitioner firm with regard to the use of the land in question. However, the first respondent, by an order, dated 26.7.2004, had held that the excess vacant land of 3450 sq.mtrs., was exempted under certain conditions and since the conditions had not been complied with and since the excess vacant land was not used for the purpose for which it was exempted, the request of the petitioner firm to use the land for putting up a star Hotel was being rejected. The first respondent had further held by his order, dated 26.7.2004, that the request of the petitioner firm for change of use had been rejected and the first respondent had also ordered that the possession of the excess vacant land be taken by the Government, within 30 days from the date of the order. The Parliament, on 22.3.1999, had introduced the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 15 of 1999). The State Government introduced a similar repealing Act, on 16.6.1999, as Act No.20 of 1999, called as the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. According to Section 4 of the Repeal Act, 1999, all proceedings relating to any order made or purported to be made under the principal Act pending, on the date of the commencement of the Act, before any Court, Tribunal or authority, shall abate.

6. The learned counsel appearing on behalf of the petitioner firm had contended that since the State Government had not taken actual possession of the land in question, by virtue of Section 4 of Act 20 of 1999, the pending proceedings shall abate and the land in question would continue to vest with the petitioner. To emphasis the above legal position, the learned counsel appearing on behalf of the petitioner firm had relied on the decision of this Court in SOSAMMA THAMPY Vs. THE ASSISTANT COMMISSIONER (ULT)-CUM-COMPETENT AUTHORITY (ULC) & ANOTHER (2006-3-L.W.50) wherein this Court has held as follows:

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"10. In these circumstances, it is clear that the proceedings initiated by the respondents for acquiring the lands of the petitioner under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, stood abated on the passing of the Repealing Act 20 of 1999 and therefore, the lands in question continues to be vested in the petitioner and neither the State Government nor the land Ceiling Authorities had any lien over the said properties of the petitioner."

7. In a recent judgment, a learned Single Judge of this Court by its order, dated 19.8.2006, in W.P.No.21141 of 2004, has held as follows:

"The writ petitioners are the land owners. Proceedings under the Tamil Nadu Urban Land Ceilings Act were initiated declaring the holdings of the petitioners as surplus. Their challenge to those proceedings had come to an end against them. But however, the said Act came to be repealed by Act 20 of 1999, which came into force with effect from 16.6.1999. There is a saving clause in the Repealing Act, namely, Section 4. Under that Section, if, prior to the passing of the Repealing Act, possession of the land declared to be surplus in the hands of the owner had been taken, then, such possession would not revert back to the land owner. There is a long line of decisions to say that unless, pursuant to the earlier declaration, physical possession of land had been taken, the proceeding initiated under the old Act would come to an end. Therefore, the question in this case is whether the competent authority under the Tamil Nadu Urban Land Ceiling Act had taken physical possession of the property in question. Learned Government Advocate relies upon a communication stated to have been written by the Revenue Inspector, Ambattur to the Revenue Inspector, Poonamallee stating that the land owners had already handed over possession. Admittedly, the land owners had not signed in that letter evidencing transfer of possession of land to the Government. Except this letter, learned Government Advocate is not in a position to bring to the notice of this court any other legal material, which would show that Government had taken physical possession of the lands in question. Therefore, following the long line of decisions and holding

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that physical possession of lands had not been taken pursuant to the earlier declaration, this writ petition stands allowed as prayed for."

8. The Division Bench of this Court, while passing its order, dated 13.7.1993, in W.A.No.50 of 1993, had stated as follows:

"9. In the instant case, even though the possession was obtained on the relevant date i.e. on 11.10.1991, as per the case put forth by the State Government, even before the possession was obtained, an application under Section 21(1) of the Act was filed by the appellant on 21.2.1991 itself. The State Government, without considering that application, appears to have proceeded to take possession of the land. In the light of the interpretation placed by us on Section 21(1) of the Act, taking possession of the excess vacant land by the State Government cannot be held to have affected the application filed by the appellant on 21.2.1991 under Section 21(1) of the Act. Therefore, as held above, the State Government, before disposing of the excess vacant land, is required to consider the application on merits and in accordance with law. Our view is also fortified by the following decisions:-

(1) BENI PRASAD Vs. DISTRICT JUDGE, ALLAHABAD (A.I.R. 1982 All.103);
(2) MANILAL Vs. STATE (A.I.R.1985 Guj. 47)
(3) KATYA CO-OPERATIVE BUILDING SOCIETY LIMITED Vs. GOVT. OF ANDHRA PRADESH (A.I.R.1985 A.P. 242); and
(4) M.SIVA RAMAKRISHNAIAH Vs. STATE (A.I.R. 1985 A.P.376).

For the reasons stated above, we hold that the impugned order of the State Government cannot be sustained.

10. In the result, the writ appeal is entitled to succeed. It is accordingly allowed. The order passed by the learned single Judge dated 7.1.1993 is set aside and the writ petition is allowed. The order dated 18.11.1992 passed by the State Government is quashed. The application dated 21.2.1991 filed by the petitioner/appellant under Section 21 of the Act is remitted to the State Government with direction to consider the same on merits and in accordance with the law after affording an opportunity of hearing to the petitioner within six weeks from the date of receipt of this order."

9. Further it is seen from the Government Order in G.O.Ms.No.344, Revenue (ULC 2-2) Department, dated 26.7.2004, that appropriate proceedings would be taken to take possession of the land in question. Therefore, it is clear that possession of the land was vested with the

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petitioner firm on the date when the Government Order was issued. If that be the position, by passing of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, (Act No.20 of 1999), all pending proceedings would stand abated in accordance with Section 4 of the said Act.

10. The learned counsel appearing on behalf of the petitioner had further stated that neither the possession of the land in question was taken nor the compensation granted in favour of the petitioner firm with regard to the said land. In such circumstances, all proceedings with regard to the land would abate.

11. Per contra, the learned Government Advocate appearing on behalf of the respondents had contended that Section 3 of Act 20 of 1999 saves the proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. Sections 3 and 4 of Act 20 of 1999 read as follows:

Section 3. Savings:- (1) The repeal of the principal Act shall not effect-

> (a) the vesting of any vacant land under sub-Section (3) of Section 11 possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;
>
> (b) The validity of any order granting exemption under sub-Section 1 of Section 21 or any action taken thereunder.
>
> (2) Where-
>
> (a) any land is deemed to have vested in the State Government under Section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by competent authority; and
>
> (b) any amount has been paid by the State Government with respect to such land
>
> then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

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> Section 4. Abatement of legal proceedings:- All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or any authority shall abate:
>
> Provided that this Section shall not apply to

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the proceedings relating to Sections 12,13,14,15, 15.B and 16 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

Therefore, a combined reading of the above Sections would show that if proceedings had been initiated under Section 11 of the principal Act and if the land in question was deemed to have vested with the State Government, the proceedings would not abate, even after coming into force of the Act 20 of 1999.

12. It has been further contended by the learned Government Advocate that in the order of the Government made in G.O.(D).No.51 Revenue (R1) Department, dated 1.2.1996, exemption was granted to the applicant for retaining the excess vacant land measuring 3450 sq.mts. in S.No.116(part) of Saligrammam Village, under Section 21(1)(a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, to be utilised for certain specific purposes and on fulfilling certain conditions. However, when the urban land owner applied for a change of project and for extension of time the Government had rejected the request in G.O.Ms.No.344, Revenue (ULC 2-2) Department, dated 26.07.2004. Accordingly, the possession of the excess vacant land was handed over to the representative of the Tahsildar, Egmore-Nungambakkam Taluk, on 11.10.1991. Thereafter, the representation, dated 18.11.1991, had been filed before the Government of Tamil Nadu requesting for grant of exemption under Section 21(1) (a) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. In such circumstances, the land in question would be deemed to have vested with the State Government and the petitioner cannot claim the possession of the land.

13. However, the learned counsel appearing on behalf of the petitioner has pointed out that even if the land is deemed to have vested with the State Government under Section 11(3) of the principal Act, if the actual possession has not been taken over by the State Government or by any person duly authorised by the State Government, all proceedings pending would abate by virtue of Section 4 of the Repeal Act 20 of 1999. Therefore, the possession of the land in question would continue to be vested with the petitioner.

14. In the present case, with regard to the land in question, it is seen from the words used in G.O.Ms.No.344, Revenue (ULC 2-2) Department, dated 26.07.2004, that the Government had decided to take possession of the lands. Accordingly, the authorities concerned have been instructed to take appropriate steps in that regard. Therefore, this Court is of the considered view that once it is found that the actual possession of the land in question had not been taken over by the State Government or

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by any person authorised by the State Government, the possession would continue to vest with the petitioner, even if a final decision had not been taken, under Section 21 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. With regard to granting of exemption, a series of decisions both of the Supreme Court and of this Court are to the effect that if the actual possession of the land in question has not been taken over by the Government or by the concerned authority and if the due compensation had not been paid, all pending proceedings with regard to the land in question would abate and the land in question would continue to vest with the owner.

15. In such circumstances, the writ petition stands allowed. No costs. Consequently, connected W.P.M.P.No.40073 of 2004 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner and Secretary (Revenue),
   Government of Tamil Nadu,
   Fort St. George, Chennai - 600 009.

2. The Special Commissioner and
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